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SENATE BILL 447

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO SPECIAL DISTRICTS; PROVIDING ADDITIONAL POWERS OF DISTRICTS; PROVIDING FOR ELECTIONS FOR THE CREATION OF DISTRICTS; PROVIDING FOR SALARIES OF BOARD MEMBERS; PROVIDING FOR ISSUANCE OF GENERAL OBLIGATION BONDS OF THE DISTRICTS; PROVIDING FOR COMPLIANCE WITH THE PROCUREMENT CODE; AMENDING AND REPEALING SECTIONS OF THE WATER AND SANITATION DISTRICT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-21-3 NMSA 1978 (being Laws 1943, Chapter 80, Section 2, as amended) is amended to read:

"73-21-3. PURPOSE OF WATER AND SANITATION DISTRICTS. -- Water and sanitation districts may be created for the purpose of:

A. purchasing, acquiring, establishing or

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1 constructing waterworks to supply water for domestic,
2 commercial and industrial purposes by any available means to
3 persons within and without the boundaries of the district
4 [and]. For this purpose, [any] a district [~~shall have~~] has the
5 power to extend its water lines outside [of] the boundaries of
6 the district for the purpose of securing a source of water
7 supply or for the purpose of supplying [~~such~~] the water to any
8 lands of the United States, [~~state of~~] New Mexico or Indian
9 reservations for use by any person, firm or corporation;

10 B. purchasing, acquiring, establishing or
11 constructing sanitary sewers or a system [~~or systems~~] of sewage
12 disposal, garbage or refuse disposal; [~~or~~]

13 C. purchasing, acquiring, establishing or
14 constructing streets and street improvements, including without
15 limitation grades, regrades, gravel, oiling, surfacing,
16 macadamizing, paving, crosswalks, sidewalks, driveway
17 approaches, curbs, gutters, culverts, drains, sewers, manholes,
18 inlets, outlets, retaining walls, bridges, overpasses, tunnels,
19 underpasses, approaches, artificial lights and lighting
20 equipment, parkways, grade separators, traffic separators and
21 traffic-control equipment and all appurtenances and incidentals
22 or any combination [~~thereof~~] of them, including real and other
23 property [~~therefor~~] for them; [~~or~~]

24 D. establishing, acquiring, owning, operating or
25 constructing park and recreational improvements, including

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1 indoor and outdoor playing fields, libraries and equestrian,
2 rodeo or any other public recreational amenities, or all of
3 ~~[such]~~ the improvements in Subsections A through ~~[D]~~ F of this
4 section or any combination ~~[thereof]~~ of them within or without
5 the district;

6 E. accepting grants, loans and donations of
7 property, entering into contracts and taking any other action
8 to assist economic development and tourism opportunities;

9 F. owning, operating, maintaining, expanding and
10 improving airports and related airport facilities and services;
11 or

12 ~~[E.]~~ G. all of ~~[such]~~ the improvements in
13 Subsections A through ~~[D]~~ F of this section or any combination
14 ~~[thereof]~~ of them within or without the district; provided that
15 if a water and sanitation district decides to engage in
16 activities authorized in Subsection D, E or F of this section,
17 the district shall, prior to taking that action, notify in
18 writing all municipalities within five miles of the proposed
19 facility of the decision. The district may proceed with its
20 action after thirty days following the notification unless a
21 municipality, by resolution of its governing body within the
22 thirty days, opposes the district and adopts a plan and
23 appropriates the money to provide the services in the area
24 proposed to be served by the district."

25 Section 2. Section 73-21-4 NMSA 1978 (being Laws 1943,

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1 Chapter 80, Section 3, as amended) is amended to read:

2 "73-21-4. DEFINITIONS. -- As used in the Water and
3 Sanitation District Act:

4 A. "sewage disposal" includes all constructions for
5 collection, transportation, pumping, treatment and final
6 disposition of sewage;

7 B. a district may be entirely within or partly
8 within and partly without one or more counties, provided those
9 parts or parcels of the district lying in two or more counties
10 are contiguous with one another, and further provided, a
11 district created pursuant to a petition signed by the board of
12 county commissioners of a county shall be entirely within that
13 county;

14 C. "board" means the board of directors, who are
15 resident qualified electors of a district;

16 D. [~~"taxpaying elector of a district" means a~~
17 ~~person, qualified to vote at general elections in the state,~~
18 ~~who either has paid or incurred a general tax liability on real~~
19 ~~property within the district in the twelve months immediately~~
20 ~~preceding a designated time or event or who is purchasing real~~
21 ~~property within the district under a real estate contract where~~
22 ~~a property tax has been paid or incurred on the real property~~
23 ~~in the twelve months immediately preceding a designated time or~~
24 ~~event]~~ "qualified elector" means a person residing in a
25 district who is qualified to vote in general elections; and

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1 E. "publication" means once a week for three
2 consecutive weeks in at least one newspaper of general
3 circulation in the county in which all or the major portion of
4 the district is located. It is not necessary that publication
5 be made on the same day of the week in each of the three weeks,
6 but not less than fourteen days, excluding the day of first
7 publication, shall intervene between the first publication and
8 the last publication, and publication shall be complete on the
9 date of the last publication. [and

10 F. ~~"county" means any class A county or any class B~~
11 ~~county with an official population shown by the most recent~~
12 ~~federal decennial census to be greater than ninety thousand.]"~~

13 Section 3. Section 73-21-6 NMSA 1978 (being Laws 1943,
14 Chapter 80, Section 5, as amended) is amended to read:

15 "73-21-6. PETITION. --

16 A. The organization of a district shall be
17 initiated by a petition filed in the office of the clerk of the
18 court vested with jurisdiction in a county in which all or part
19 of the real property in the proposed district is situated. The
20 petition shall be signed by not less than twenty-five percent
21 of the ~~[taxpaying]~~ qualified electors of the district, none of
22 whom shall be an officer, director or shareholder of any
23 business entity with an economic interest in the subdivision
24 and sale of land within the district, provided that at the
25 option of a county and, after adoption of a resolution by the

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1 county authorizing the filing of a petition, that county may
2 file a petition which shall be signed by the chairman of the
3 board of county commissioners. The petition and all other
4 instruments relating to the formation of such districts shall
5 be filed with the county clerk of the county in which all or
6 the major portion of the proposed district is located.

7 B. The petition shall set forth:

8 (1) the name of the proposed district
9 consisting of a chosen name preceding the words "water and
10 sanitation district";

11 (2) a general description of the improvements
12 to be constructed or installed within and for the district;

13 (3) the estimated overall cost of the proposed
14 improvements to be constructed or installed within and for the
15 district;

16 (4) an estimated time table for the completion
17 intended improvements;

18 (5) the need for the creation of the district
19 and the construction or installation of improvements, stating
20 the nature and extent of the anticipated use of the
21 improvements by persons presently residing on land within the
22 district, and the nature and extent of the anticipated use of
23 the improvements due to future development;

24 (6) a general description of the boundaries of
25 the district or the territory to be included in it, with such

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1 certainty as to enable a property owner to determine whether or
2 not his property is within the district; and

3 ~~[(7) the salary, if any, that the members of~~
4 ~~the board shall receive for their services; provided, however,~~
5 ~~that no member of the board shall receive a salary in excess of~~
6 ~~five dollars (\$5.00) per day for each day while in actual~~
7 ~~attendance upon his duties; and~~

8 ~~(8)]~~ (7) a request for the organization of the
9 district.

10 C. ~~[No]~~ A petition with the requisite signatures
11 shall not be declared void on account of alleged defects, but
12 the court may at any time permit the petition to be amended to
13 conform to the facts by correcting any errors in the
14 description of the territory or in any other particular.
15 Similar petitions or duplicate copies of the same petition for
16 the organization of the same district may be filed and shall
17 together be regarded as one petition. All such petitions filed
18 prior to the hearing on the first petition filed shall be
19 considered by the court the same as though filed with the first
20 petition placed on file."

21 Section 4. Section 73-21-8 NMSA 1978 (being Laws 1943,
22 Chapter 80, Section 7, as amended) is amended to read:

23 "73-21-8. NOTICE OF HEARING ON PETITION. -- Upon approval
24 of the county special district commission as provided in the
25 Special District Procedures Act, where applicable, the court

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1 shall fix a place and time, not less than twenty days [~~nor~~] or
2 more than forty days after receipt of the decision of the
3 county special district commission, for hearing [~~thereon~~] on
4 the petition, and [~~thereupon~~] the clerk of the court shall then
5 cause notice by publication to be made of the pendency of the
6 petition and of the time and place of hearing [~~thereon~~] on it.
7 The clerk of the court shall also [~~forthwith~~] immediately cause
8 a copy of the notice to be mailed by United States registered
9 mail to the board of county commissioners of each of the
10 several counties and shall notify the attorney general and the
11 [~~health and social services~~] department of environment of the
12 hearing to be held for the creation of the district by mailing
13 notice addressed to [~~the same~~] them, such notice to be
14 deposited in the mail not less than ten days prior to the date
15 set for the hearing, and the attorney general and the [~~health~~
16 ~~and social services~~] department of environment may appear and
17 be heard at the hearings. "

18 Section 5. Section 73-21-9 NMSA 1978 (being Laws 1943,
19 Chapter 80, Section 8, as amended) is amended to read:

20 "73-21-9. HEARING ON PETITIONS--ELECTION FOR ORGANIZATION
21 AND OFFICERS.--

22 A. On the day fixed for the hearing or at an
23 adjournment of it, the court shall ascertain from the tax rolls
24 of the county in which the district is located or into which it
25 extends, from the last official registry list and from any

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1 other evidence [~~which~~] that may be adduced, the total number of
2 [~~taxpaying~~] qualified electors residing within the proposed
3 district.

4 B. If the court finds that [~~no~~] a petition has not
5 been signed and presented in conformity with the Water and
6 Sanitation District Act, or that the material facts are not as
7 set forth in the petition filed, it shall dismiss the
8 proceedings and adjudge the costs against the signers of the
9 petition or, if applicable, the board of county commissioners
10 of a county, in the proportion as it deems just and equitable.
11 No appeal or suit of error shall lie from an order dismissing
12 the proceedings; but nothing in that act shall prevent the
13 filing of a subsequent petition for similar improvements or for
14 a similar district, and the right to renew the proceeding is
15 expressly granted and authorized.

16 C. At any time after the filing of the petition for
17 the organization of a district and before the day fixed for the
18 hearing on it, the owner of any taxable property within the
19 proposed district may file a petition with the court stating
20 reasons why the property should not be included in the district
21 and requesting that the property be excluded from it. The
22 petition shall be verified and shall describe the property
23 sought to be excluded. The court shall hear the petition and
24 all objections to it at the time of the hearing on the petition
25 for organization and shall determine whether the property

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1 should be excluded or included in the district.

2 D. In determining whether or not the petition for
3 the creation of a water and sanitation district shall be
4 granted, the district court shall consult and request an
5 opinion from:

6 (1) the state engineer to determine whether
7 the proposed district has adequate water rights to implement
8 the proposed improvements; and

9 (2) the [~~environmental improvement division~~]
10 department of environment to determine, as to the technological
11 feasibility of the proposed improvements, whether the water
12 proposed to be supplied is of an acceptable quality to conform
13 with the state regulations and whether the liquid and solid
14 waste disposal proposals can conform with state regulations.

15 E. The court may deny the petition or may order the
16 petition to be modified, if the court, after hearing on the
17 petition, finds that:

18 (1) the proposed water and sewage improvements
19 cannot conform with the state regulations;

20 (2) the water and sewage improvements cannot
21 be implemented within a reasonable time taking into
22 consideration applications for state and federal grants;

23 (3) there is lacking an actual or impending
24 need for the water and sewage improvements proposed; or

25 (4) the boundaries of the proposed district

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1 contain land that has no actual or impending need for the water
2 and sewage improvements or cannot be reasonably expected to
3 utilize the water and sewage improvements, unless the land is
4 otherwise required to be included in the proposed district by
5 rule or regulation of a federal agency.

6 F. Upon the hearing, if it appears that a petition
7 for the organization of a district has been properly signed and
8 presented and that the allegations of the petition are true,
9 the court shall order that the question of the organization of
10 the district be submitted to the [~~taxpaying~~] qualified electors
11 residing within the boundaries of the district as set forth in
12 the petition, as the boundaries were modified by the court in
13 determining that only property to be benefited by the proposed
14 improvements should be included within the boundaries of the
15 district, at an election to be held for that purpose, and the
16 order shall designate one or more polling places within the
17 district, and for each polling place so designated, shall
18 appoint three [~~taxpaying~~] qualified electors of the district as
19 judges of the election and two [~~taxpaying~~] qualified electors
20 of the district as clerks of the election. The clerk of the
21 court having jurisdiction shall give published notice of the
22 time and place of an election to be held in the district not
23 less than twenty days after the first publication of the
24 notice.

25 G. The election shall be [~~held and~~] conducted by

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1 the clerk of the county in which the majority of the land in
2 the proposed district lies and as nearly as possible in the
3 same manner as general elections in this state; provided,
4 however, that the clerk has the discretion to conduct the
5 election by paper ballot. No special registration for the
6 election is required, but for the purpose of determining
7 qualifications of electors, the judges may use the last
8 official registry lists of electors residing in the district,
9 and, in addition, they may require the execution of an
10 affidavit concerning the qualifications of any elector.

11 H. At the election, the [~~taxpaying~~] qualified
12 electors shall vote for or against the organization of the
13 district, and if in favor thereof, shall vote for three
14 [~~taxpaying~~] qualified electors of the district who shall
15 constitute the board of directors of the district, one to act
16 until the first biennial election, one until two years and one
17 until four years after the election, except that at the
18 election in a county where the petition for the district was
19 signed by the chairman of the board of county commissioners,
20 the [~~taxpaying~~] qualified electors shall vote only for or
21 against the organization of the district.

22 I. The judges of election shall certify the returns
23 of the election to the district court having jurisdiction. If
24 a majority of the votes cast at the election are in favor of
25 the organization, the district court shall declare the district

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1 organized and give it a corporate name by which, in all
2 proceedings, it shall thereafter be known, and designate the
3 first board of directors elected, except that a district
4 created pursuant to a petition signed by the chairman of the
5 board of county commissioners of a county shall appoint the
6 first board of directors as provided in Section 73-21-15.1 NMSA
7 1978. Thereupon the district shall be a governmental
8 subdivision of the state, except a district created pursuant to
9 a petition signed by the chairman of the board of county
10 commissioners of a county, which district shall be a
11 subdivision of the county. Every district shall be a body
12 corporate with all the powers of a public or quasi-municipal
13 corporation.

14 J. If an order is entered establishing the
15 district, the order is final and no appeal or writ of error
16 shall lie therefrom, and the entry of the order shall finally
17 and conclusively establish the regular organization of the
18 district against all persons except the state, in an action in
19 the nature of a writ of quo warranto, commenced by the attorney
20 general within thirty days after the decree declaring the
21 district organized. The organization of the district shall not
22 be directly or collaterally questioned in any suit, action or
23 proceeding except as expressly authorized in the Water and
24 Sanitation District Act. "

25 Section 6. Section 73-21-13 NMSA 1978 (being Laws 1943,
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1 Chapter 80, Section 12, as amended) is amended to read:

2 "73-21-13. MEETINGS. -- The board shall meet once each
3 month at a time and place to be designated by the board.
4 Special meetings may be held as often as the needs of the
5 district require on notice to each member of the board. A
6 majority of the board shall constitute a quorum at any meeting.
7 Any vacancy on a board elected by [~~taxpaying~~] qualified
8 electors of the district shall be filled by the remaining
9 members or member of the board, the appointee to act until the
10 next biennial election when the vacancy shall be filled by
11 election. Any vacancy on a board appointed by a board of
12 county commissioners shall be filled in the same manner as
13 original appointments, in accordance with Section 73-21-15.1
14 NMSA 1978, the appointee to act until the end of the term of
15 the member creating the vacancy. If the board or a board of
16 county commissioners fails to fill any vacancy within thirty
17 days after it occurs, the court having jurisdiction shall fill
18 the vacancy. "

19 Section 7. Section 73-21-14 NMSA 1978 (being Laws 1943,
20 Chapter 80, Section 13, as amended) is amended to read:

21 "73-21-14. ELECTIONS. --

22 A. In any district, except a district created
23 pursuant to a petition signed by the chairman of the board of
24 county commissioners of a county, on the second Tuesday of
25 January in the second calendar year after the organization of

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1 the district and on the second Tuesday of January every second
2 year thereafter, there shall be elected by the [~~taxpaying~~]
3 qualified electors of the district one member of the board to
4 serve for a term of six years, except that if the district
5 elects to adopt four year terms, the member shall serve for a
6 term of four years.

7 B. In any district created pursuant to a petition
8 signed by the chairman of the board of county commissioners of
9 a county, one year after the organization of the district and
10 every second year thereafter, there shall be elected by the
11 [~~taxpaying~~] qualified electors of the district at least two,
12 but no more than three, members of the board to serve for a
13 term of two years.

14 C. [~~Not later than thirty days before any election~~
15 ~~pursuant to Subsections A or B of this section, nominations may~~
16 ~~be filed with the secretary of the board, and, if a nominee~~
17 ~~does not withdraw his name before the first publication of the~~
18 ~~notice of election, his name shall be placed on the ballot.~~
19 ~~The board shall provide for holding such election and shall~~
20 ~~appoint judges to conduct it. The secretary of the district~~
21 ~~shall give notice of election by publication and shall arrange~~
22 ~~such other details in connection therewith as the board may~~
23 ~~direct. The returns of the election shall be certified to and~~
24 ~~shall be canvassed and declared by the board. The candidate~~
25 ~~receiving the most votes shall be elected. Any new member of~~

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1 ~~the board shall qualify in the same manner as members of the~~
2 ~~first board qualify.]~~ Elections pursuant to Subsections A and B
3 of this section shall be conducted pursuant to Sections 1-24-1
4 through 1-24-4 NMSA 1978, provided the board has the discretion
5 to conduct the election by paper ballot. "

6 Section 8. Section 73-21-15 NMSA 1978 (being Laws 1977,
7 Chapter 326, Section 2, as amended) is amended to read:

8 "73-21-15. BOARD INCREASE--SPECIAL ELECTION. --

9 A. In any district where members of the board are
10 elected by the ~~[taxpaying]~~ qualified electors of the district
11 ~~[within six months of July 1, 1981]~~, the board may, upon its
12 own motion, or ~~[upon petition to the board]~~ shall, if
13 petitioned by two thirds of the qualified electors of the
14 district, ~~[shall]~~ call a special election for the purpose of
15 deciding whether to increase the membership of the board to
16 five members.

17 B. If at the special election, conducted pursuant
18 to Sections 1-24-1 through 1-24-4 NMSA 1978, a majority of the
19 qualified electors vote in favor of the proposal, the board
20 shall appoint two members who shall serve until the next
21 regularly scheduled election of the district when the two
22 appointed positions shall be filled by election. Of the two
23 new board vacancies, ~~[one person shall be elected for a term of~~
24 ~~two years and one person shall be elected for a term of four~~
25 ~~years. The successors of these two board members shall be~~

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1 ~~elected for four-year terms~~ persons shall be elected for
2 staggered terms that will fit with either the six-year or four-
3 year term option pursuant to Section 73-21-14 NMSA 1978. "

4 Section 9. Section 73-21-16 NMSA 1978 (being Laws 1943,
5 Chapter 80, Section 14, as amended) is amended to read:

6 "73-21-16. GENERAL POWERS. --For and on behalf of the
7 district, the board shall have the following powers:

8 A. to have perpetual existence;

9 B. to have and use a corporate seal;

10 C. to sue and be sued and be a party to suits,
11 actions and proceedings;

12 D. except as otherwise provided in the Water and
13 Sanitation District Act, to enter into contracts and agreements
14 affecting the affairs of the district, including contracts with
15 the United States and any of its agencies or instrumentalities;
16 ~~[Except in cases in which a district will receive aid from a~~
17 ~~governmental agency, a notice shall be published for bids on~~
18 ~~all construction contracts for work or material or both~~
19 ~~involving an expense of five thousand dollars (\$5,000) or more.~~
20 ~~The district may reject any and all bids, and if it appears~~
21 ~~that the district can perform the work or secure material for~~
22 ~~less than the lowest bid, it may proceed to do so]~~ provided
23 that the Procurement Code shall be followed where applicable;

24 E. to borrow money and incur indebtedness and
25 evidence the indebtedness by certificates, notes or debentures

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1 and to issue bonds in accordance with the provisions of [~~that~~]
2 the Water and Sanitation District Act;

3 F. to acquire, dispose of and encumber real and
4 personal property, water rights, water and sewer works and
5 plants and any interest in them, including leases and
6 easements;

7 G. to refund any bonded indebtedness or revenue
8 bonds of the district without an election in accordance with
9 the provisions of [~~that~~] the Water and Sanitation District Act;

10 H. to have the management, control and supervision
11 of all the business and affairs of the district and the
12 construction, installation, operation and maintenance of
13 district improvements;

14 I. to hire and retain agents, employees, engineers
15 and attorneys;

16 J. to have and exercise the power of eminent domain
17 and dominant eminent domain and, in the manner provided by law
18 for the condemnation of private property for public use, to
19 take any property necessary to the exercise of the powers
20 granted in [~~that~~] the Water and Sanitation District Act, both
21 within and without the district;

22 K. to construct and maintain works and establish
23 and maintain facilities across or along any public street or
24 highway and in, upon or over any vacant public lands, which
25 public lands are now or may become the property of the state,

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1 and to construct works and establish and maintain facilities
2 across any stream of water or watercourse; provided, however,
3 that the district shall promptly restore any such street or
4 highway to its former state of usefulness as nearly as may be
5 and shall not use the street or highway in such manner as to
6 completely or unnecessarily impair its usefulness;

7 L. to fix and from time to time to increase or
8 decrease water and sewer rates, tolls or charges for services
9 or facilities furnished or made available by the district,
10 including without limiting the generality of the foregoing
11 standby charges for both water and sewers, and to pledge that
12 revenue for the payment of any indebtedness of the district.
13 Until paid, all rates, tolls or charges constitute a perpetual
14 lien on and against the property served, and any such lien may
15 be foreclosed in the same manner as provided by the laws of New
16 Mexico for the foreclosure of real estate mortgages. The board
17 shall shut off or discontinue service for delinquencies in the
18 payment of the rates, tolls or charges or in the payment of
19 taxes levied pursuant to the Water and Sanitation District Act
20 and prescribe and enforce rules and regulations for the
21 connection with and the disconnection from properties of the
22 facilities of the district. For health and sanitary purposes,
23 the board shall have the power to compel the owners of
24 inhabited property within a sanitation district to connect
25 their property with the sewer system of the district, and, upon

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1 a failure so to connect within sixty days after written notice
2 by the board, the board may cause the connection to be made and
3 a lien to be filed against the property for the expense
4 incurred in making the connection; provided, however, that no
5 owner shall be compelled to connect his property with such
6 system unless a service line is brought by the district to a
7 point within four hundred feet of his dwelling place;

8 M to provide for the collection and disposal of
9 refuse in any manner deemed suitable by the district,
10 including:

11 (1) appointing or contracting with a refuse
12 collector and prescribing the duties and compensation of a
13 refuse collector;

14 (2) requiring each person owning or
15 controlling real property within the district boundaries and
16 connected to the district water or sewer system to pay a
17 reasonable fee for the collection and disposal of refuse
18 whether or not the refuse collection service is used by the
19 person; and

20 (3) determining if the district or the refuse
21 collector shall collect the fee for the collection and disposal
22 of refuse;

23 N. to develop and file with the office of the state
24 engineer forty-year water plans, amendments and updates, which
25 water plans, coupled with any water rights declarations of

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1 intent to perfect water rights filed with the office of the
2 state engineer, shall define the water service area boundaries,
3 which shall not include any areas served by an existing county,
4 municipal or mutual domestic water consumers association
5 system;

6 [M-] O. to adopt and amend bylaws not in conflict
7 with the constitution and laws of the state for carrying on the
8 business, objects and affairs of the board and of the district;
9 [and

10 N-] P. to have and exercise all rights and powers
11 necessary or incidental to or implied from the specific powers
12 granted in this section. Such specific powers shall not be
13 considered as a limitation upon any power necessary or
14 appropriate to carry out the purposes and intent of [~~that~~] the
15 Water and Sanitation District Act; and

16 Q. if approved by an affirmative vote of three
17 fourths of the members, to establish a salary for the board
18 members that will not exceed one half the maximum salary paid a
19 member of the board of county commissioners of the county in
20 which a majority of the land of the district lies."

21 Section 10. Section 73-21-26 NMSA 1978 (being Laws 1943,
22 Chapter 80, Section 24, as amended) is amended to read:

23 "73-21-26. GENERAL OBLIGATION BONDS--INTEREST--FORM -- To
24 carry out the purposes of the Water and Sanitation District
25 Act, the board may issue general obligation bonds of the

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1 district upon approval of the majority of the [~~taxpaying~~
2 qualified electors of the district voting on the question. The
3 general obligation bonds shall bear interest payable
4 semiannually and shall be due and payable serially, either
5 annually or semiannually, commencing not later than three years
6 and extending not more than twenty years from date. The form
7 and terms of the general obligation bonds, including provisions
8 for their payment and redemption, shall be determined by the
9 board. If the board so determines, the general obligation
10 bonds may be redeemable prior to maturity upon payment of a
11 premium, not exceeding three percent of the principal thereof.
12 The general obligation bonds, except for bonds issued in book
13 entry or similar form without the delivery of physical
14 securities, shall be executed in the name of and on behalf of
15 the district and signed by the chairman of the board, with the
16 seal of the district affixed thereto, and attested to by the
17 secretary of the board. The general obligation bonds shall be
18 sold and shall be in such denominations as the board
19 determines, and the bonds and the attached coupons, if any,
20 shall be payable to the bearer or registered as to principal or
21 as to principal and interest. Interest coupons, if any, shall
22 bear the original or facsimile signature of the chairman of the
23 board. "

24 Section 11. Section 73-21-28 NMSA 1978 (being Laws 1943,
25 Chapter 80, Section 25) is amended to read:

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1 "73-21-28. BOARD RESOLUTION--INDEBTEDNESS--ELECTION. --

2 Whenever [~~any~~] the board shall, by resolution, determine that
3 the interest of [~~said~~] the district and the public interest or
4 necessity demand the acquisition, construction, installation or
5 completion of any works or other improvements or facilities, or
6 the making of any contract with the United States or other
7 persons or corporations, to carry out the objects or purposes
8 of [~~said~~] the district, requiring the creation of an
9 indebtedness of five thousand dollars (\$5,000) or more, [~~said~~]
10 the board shall order the submission of the proposition of
11 issuing [~~such obligations or~~] the general obligation bonds or
12 creating other indebtedness to the qualified [~~taxpaying~~]
13 electors of the district at an election held for that purpose.
14 [~~Any such~~] The election may be held separately or may be
15 consolidated or held concurrently with any other election
16 authorized by [~~this~~] the Water and Sanitation District Act.
17 The election shall be conducted pursuant to Sections 1-24-1
18 through 1-24-4 NMSA 1978, provided that the board has the
19 discretion to conduct the election by paper ballot. The
20 declaration of public interest or necessity [~~herein~~] required
21 [~~and the provision for the holding of such election~~] in this
22 section may be included within one and the same resolution
23 [~~which~~]. The resolution, in addition to [~~such~~] the declaration
24 of public interest or necessity, shall recite the objects and
25 purposes for which the indebtedness is proposed to be incurred,

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underscored material = new
[bracketed material] = delete

1 the estimated cost of the works or improvements, as the case
2 may be, the amount of principal of the ~~[indebtedness]~~ general
3 obligation debt to be incurred ~~[therefor]~~ and the maximum rate
4 of interest to be paid on ~~[such]~~ the indebtedness. ~~[Such~~
5 ~~resolution shall also fix the date upon which such election~~
6 ~~shall be held and the manner of holding the same and the method~~
7 ~~of voting for or against the incurring of the proposed~~
8 ~~indebtedness.—Such]~~ The resolution shall also fix the
9 compensation to be paid the officers of the general obligation
10 bond election and shall designate the polling place ~~[or places]~~
11 and shall appoint, for each polling place, from the qualified
12 electors of the district, the officers of ~~[such]~~ the election
13 consisting of a minimum of three judges ~~[one of whom shall act~~
14 ~~as clerk]. "~~

15 Section 12. Section 73-21-30 NMSA 1978 (being Laws 1943,
16 Chapter 80, Section 27) is amended to read:

17 "73-21-30. CONDUCT OF ELECTION--CANVASS OF RETURNS.--The
18 ~~[election]~~ board ~~[or boards]~~ shall conduct the ~~[election in the~~
19 ~~manner prescribed by law for the holding of general elections~~
20 ~~and shall make their returns to the secretary of the district]~~
21 general obligation bond elections pursuant to Sections 1-24-1
22 through 1-24-4 NMSA 1978; provided that the board has the
23 discretion to conduct the election by paper ballot. At any
24 regular or special meeting of the board held within five days
25 following the date of ~~[such]~~ the election, the returns

underscored material = new
[bracketed material] = delete

1 ~~[thereof]~~ of the election shall be canvassed and the results
2 ~~[thereof]~~ declared. "

3 Section 13. Section 73-21-31 NMSA 1978 (being Laws 1943,
4 Chapter 80, Section 28) is amended to read:

5 "73-21-31. EFFECT OF ELECTION--SUBSEQUENT ELECTIONS. --In
6 the event that it ~~[shall appear]~~ appears from ~~[said]~~ the
7 returns that a majority of ~~[said]~~ the qualified ~~[taxpaying]~~
8 electors of the district who ~~[shall]~~ have voted on any
9 ~~[proposition submitted hereunder]~~ proposed general obligation
10 bond under the provisions of the Water and Sanitation District
11 Act at ~~[such]~~ the election voted in favor of ~~[such]~~ the
12 proposition, the district shall ~~[thereupon]~~ then be authorized
13 to incur such indebtedness or obligations, enter into such
14 contract or issue and sell such general obligation bonds of the
15 district, as the case may be, ~~[all]~~ for the purpose ~~[or~~
16 ~~purposes]~~ and object ~~[or objects]~~ provided for in the
17 proposition submitted ~~[here under]~~ under the provisions of that
18 act and in the resolution ~~[there for]~~ for them and in the
19 amount so provided and at a rate of interest not exceeding the
20 rate of interest recited in ~~[such]~~ the resolution. Submission
21 of the proposition of incurring ~~[such obligations or]~~ general
22 obligation bonded ~~[or other]~~ indebtedness at ~~[such]~~ an election
23 shall not prevent or prohibit submission of ~~[the same]~~ it or
24 other general obligation bond propositions at subsequent
25 ~~[election or]~~ elections called for ~~[such]~~ that purpose."

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underscored material = new
[bracketed material] = delete

1 Section 14. Section 73-21-40 NMSA 1978 (being Laws 1951,
2 Chapter 195, Section 5, as amended) is amended to read:

3 "73-21-40. RATES--BONDHOLDERS' REMEDY AND ~~[TAXPAYER]~~
4 QUALIFIED ELECTOR. --It is made mandatory upon boards of
5 directors of water and sanitation districts issuing water and
6 sewer revenue bonds under the provisions of the Water and
7 Sanitation District Act to establish such rates for services
8 rendered by the water or sewer system or joint water and sewer
9 system as will create an income sufficient to pay all
10 reasonable expenses of operation and create a net revenue
11 ~~[which]~~ that shall be sufficient to pay interest coupons on the
12 revenue bonds, as they mature, and to provide a sinking fund
13 ~~[which]~~ that shall be adequate to discharge the bonds as and
14 when they mature. It is their duty to maintain the rates
15 continuously until the bond issue has been fully liquidated.
16 In the event of their failure or refusal so to do, all the
17 members of the boards of directors are liable to the penalties
18 provided in Section 73-21-42 NMSA 1978, and any bondholder or a
19 number of ~~[taxpayer]~~ qualified electors of the district
20 amounting to twenty-five persons or five percent of the
21 electors, whichever is less, has the right to apply to the
22 district court of the county where a water and sanitation
23 district is located for a mandatory order requiring the
24 establishment by a board of directors of rates ~~[which]~~ that
25 shall be adequate to meet the requirements of that act."

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underscored material = new
[bracketed material] = delete

1 Section 15. Section 73-21-55 NMSA 1978 (being Laws 1985,
2 Chapter 166, Section 3, as amended) is amended to read:

3 "73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS-- OPTION
4 TO SUBMIT TO REGULATION. --

5 A. [~~No~~] A district organized under the provisions
6 of the Water and Sanitation District Act is not subject to the
7 jurisdiction of the [~~New Mexico~~] public [~~utility~~] regulation
8 commission or the terms and provisions of the Public Utility
9 Act [~~as amended~~], except as provided in Subsections B and C of
10 this section.

11 B. [~~Any~~] A district organized under the provisions
12 of the Water and Sanitation District Act may elect by
13 resolution adopted by its board of directors to become subject
14 to the jurisdiction of the [~~New Mexico~~] public [~~utility~~]
15 regulation commission and to the terms and provisions of the
16 Public Utility Act [~~as amended~~]; provided, however, that in no
17 event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to
18 [~~any~~] a district making such an election.

19 C. If the board of directors has not elected to
20 become subject to the jurisdiction of the [~~New Mexico~~] public
21 [~~utility~~] regulation commission [~~under~~] as provided for in
22 Subsection B of this section, it shall nevertheless file with
23 the commission any rates, tolls and charges proposed by the
24 board, which shall be subject to approval by the [~~New Mexico~~]
25 public [~~utility~~] regulation commission if [~~twenty-five of the~~

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underscored material = new
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1 ~~taxpayer electors or five percent of the taxpayer electors of~~
2 ~~the district, whichever is less]~~ thirty percent or more of the
3 qualified electors of the district file a petition pursuant to
4 Section 3-1-5 NMSA 1978 protesting the rates, tolls or charges
5 with the commission within thirty days after the board proposes
6 the rates. Upon the filing of such a petition, the commission
7 shall hold a hearing pursuant to rules that it shall promulgate
8 to implement this subsection. "

9 Section 16. REPEAL. --Section 73-21-29 NMSA 1978 (being
10 Laws 1943, Chapter 80, Section 26) is repealed.

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